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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/358,280	07/21/1999	STEVEN M. UTTER	MISTY-52064	1354
7590 04/27/2005				
Rosenbaum & Associates, P.C. 650 Dundee Road, Suite #380 Northbrook, IL 60062				
			EXAMINER KIM, CHRISTOPHER S	
			ART UNIT 3752	PAPER NUMBER
DATE MAILED: 04/27/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/358,280

Applicant(s)

UTTER, STEVEN M.

Examiner

Christopher S. Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5,7-10,18-21,23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5,7-10,18-21,23 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 December 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 14, 2005 has been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Priority***

3. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 and/or 121 as follows:

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application); the disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

Claims 7, 9, 10, 18-21 and 23 have not been granted the benefit of the earlier filing date.

### ***Drawings***

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "restrictive valve directly coupled to the inlet of the pressurizable container" recited in claims 5 and 18; and the "non-removable means for pressurizing the pressurizable container" recited in claim 24 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 5, 7-10, 18-21, 23 and 24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 5 recites "a restrictive valve directly coupled to the inlet of the pressurizable container." The specification discloses, on page 3, lines 9-10, "a flow valve 12 connected to a fluid outlet 20 of the tank, and a spray nozzle 10 connected to the flow valve 12 by a flexible or rigid tube 8." The specification further discloses, on page 3, lines 11-13, a removable cap 200 attached to the inlet to the pressurizable container/chamber 13. The disclosure, as originally filed, fails to disclose a restrictive valve directly coupled to the inlet of the pressurizable container.

Claim 18 recites similar limitations directed to a restrictive valve directly coupled to the inlet of the pressurizable container.

Claim 24 recites "a non-removable means for pressurizing the pressurizable container." The specification disclose, on page 3, lines 11-12, a "removable cap 200" and on page 3, line 18, "pump apparatus 200 is comprised of a threaded cap 20." The specification, as originally filed, fails to disclose a non-removable means for pressurizing the pressurizable container.

***Claim Rejections - 35 USC § 102***

7. Claims 5, 8, 9, 18, 19, 21, 23 and 24 (as best understood) are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (2,853,212).

With respect to claims 5, 8, 9, 23 and 24, Anderson discloses an apparatus comprising: a pressurizable container 10; means 13 for pressurizing the container; a water conduit 34 (a first conduit - portion of conduit 34 inside container 10; a second conduit - portion of conduit 34 outside container 10); a spray nozzle (column 3, lines 42); a restrictive valve (inherent in order to build up the pressure in container 10); a means for sealing 16.

With respect to claims 18, 19 and 21, Anderson discloses an apparatus comprising: a pressurizable container 10; a manual pump 13; a means for delivering fluid (spray nozzle); a means for controlling the emission of evaporative mist (valve, which must be inherent to build up the pressure in container 10); a first conduit (portion of conduit 34 inside container 10); a second conduit (portion of conduit 34 outside container 10); a means for hands-free directing (ability for tube 34 to hang and point the nozzle downward).

Intended use recitation such as "for cooling a local area in the vicinity of a person by evaporative cooling" does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations

Functional recitation such as "said spray nozzle delivering an evaporative cooling mist of water in the vicinity of a person" has not been given patentable weight because it is narrative in form. The functional recitation merely requires the ability to so perform.

8. Claims 5, 8, 18, 19, 21, 23 and 24 (as best understood) are rejected under 35 U.S.C. 102(b) as being anticipated by Cushing (4,911,339).

With respect to claims 5, 23 and 24, Cushing discloses an apparatus comprising: a pressurizable container 16; means 40 for pressurizing the container; a water conduit 18, 51, 72 (a first conduit 72; a second conduit 18, 51); a spray nozzle 20; a restrictive valve 46; a means for sealing 36,70.

With respect to claims 18, 19 and 21, Cushing discloses an apparatus comprising: a pressurizable container 16; a manual pump 40; a means for delivering fluid (spray nozzle) 20; a means for controlling the emission of evaporative mist (valve) 46; a first conduit 72; a second conduit 18, 51; a means for hands-free directing (clip) 24.

### ***Claim Rejections - 35 USC § 103***

9. Claims 5, 8, 9, 18, 19, 21, 23 and 24 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (2,853,212) in view of Norman (842,689).

This rejection is on the basis that applicant believes that a valve is not inherent in Anderson.

With respect to claims 5, 8, 9, 23 and 24, Anderson discloses an apparatus comprising: a pressurizable container 10; means 13 for pressurizing the container; a water conduit 34 (a first conduit - portion of conduit 34 inside container 10; a second conduit - portion of conduit 34 outside container 10); a spray nozzle (column 3, lines 42); a means for sealing 16.

With respect to claims 18, 19 and 21, Anderson discloses an apparatus comprising: a pressurizable container 10; a manual pump 13; a means for delivering fluid (spray nozzle); a first conduit (portion of conduit 34 inside container 10); a second conduit (portion of conduit 34 outside container 10); a means for hands-free directing (ability for tube 34 to hang and point the nozzle downward).

Intended use recitation such as "for cooling a local area in the vicinity of a person by evaporative cooling" does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations

Functional recitation such as "said spray nozzle delivering an evaporative cooling mist of water in the vicinity of a person" has not been given patentable weight because it is narrative in form. The functional recitation merely requires the ability to so perform.

A valve must be inherent in Anderson for the device to operate, but if applicant believes that Anderson does not disclose a valve in tube 34, Norman discloses a spray nozzle and valve 8. It would have been obvious to a person having ordinary skill in the



art at the time of the invention to have provided the valve of Norman to the device of Anderson to enable buildup of pressure and to control the release of water/solution.

10. Claim 10 (as best understood) is rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing (4,911,339).

Cushing in view of Rosenberg discloses the limitations of the claimed invention with the exception of ice. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have added ice to the container of Cushing to dispense ice water.

11. Claims 7 and 20 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing (4,911,339) in view of Shurnick et al. (4,852,781).

Cushing differs from what is claimed in the means secured to the misting apparatus for attaching the misting apparatus to a person's waist. Shurnick et al. discloses a means 27 for securing a bottle to a part of a person's body (waist shown in figure 1). It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced cage 30 of Cushing with the means 27 of Shurnick et al. to attach the device of Cushing to a runner.

12. Claim 9 (as best understood) is rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing (4,911,339) in view of Anderson (2,853,212).

Cushing discloses the limitations of the claimed invention with the exception of the manual piston type pump. Norman discloses a piston pump 7, 11, 12, 13, 17. It would have been obvious to a person having ordinary skill in the art at the time of the

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invention to have replaced the bellows pump of Cushing with the piston pump of Norman to provide faster compression.

### ***Response to Arguments***

13. Applicant's arguments with respect to claims 5, 7-10, 18-21, 23 and 24 have been considered but are moot in view of the new ground(s) of rejection.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher S. Kim  
Primary Examiner  
Art Unit 3752

CK